

WATSON
Serial No. 09/529,201

REMARKS

Applicant specifically incorporates herein the facts and circumstances reiterated in the "Letter to Group Director" filed November 18, 2002. As applicant related in that Letter, the applicant is being and has been damaged by Patent Office delay in declaring an interference in the above application. Applicant filed an Amendment on October 23, 2001, in which claims were copied from the previously published Tannas '906 application. During the subsequent 15 months time period, numerous communications have transpired between applicant's representative and various Patent Office personnel. However, as yet no interference has been declared some 15 months after filing of applicant's Amendment copying claims.

During this period of time, the patentee has continually built up his business claiming what are now two issued patents (the '906 patent and the '999 patent, a continuation of '906). The claims in the patents cover an invention which was first seen by the patentee during a visit to the applicant's research laboratories in the U.K. after applicant's PCT application was filed and long before the filing date of the patentee's application.

On December 10, 2002, telephone discussion were held with Mr. Glick of the Patent Office indicating that the issue of declaration of interference was on his desk. It was agreed that Mr. Glick would contact the undersigned after reviewing the file with suggestions regarding expediting the declaration of interference.

Hearing nothing for several months, contact was finally made with Mr. Glick on February 13 whereupon he indicated that the Board of Patent Interferences would refuse

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to consider the present interference until all issues of claim patentability were resolved by the Examiner. Mr. Glick specifically indicated that, notwithstanding the provisions of MPEP Section 2307.02 mandating that "if at least one of the presented claims is not rejectable on any such ground and is claiming the same invention as at least one claim of the patent, the examiner should proceed to propose an interference" continued delays would occur until patentability of all claims was resolved.

Applicant noted that claim 53 has been allowed by the Examiner since February 11, 2002 (paper no. 18) and is identical to independent claim 1 in the '906 patent, whose claims were initially copied. In an attempt to move a declaration of an interference along in this matter, Mr. Glick suggested that applicant cancel all non-allowed claims and that those claims could be reintroduced after conclusion of the interference.

The above cancellation of all non-allowed claims is made while specifically reserving the right to reintroduce such claims after conclusion of the interference in accordance with Mr. Glick's request. This cancellation is made based upon the PTO statements, passed along by Mr. Glick, that the Administrative Patent Law Judge will refuse to declare an interference until the patentability of all pending claims has been resolved. Because all remaining claims have been indicated as allowed by the Examiner, no such further basis for delay is believed appropriate and an early consideration and declaration of an interference with the Tannas '906 and '999 patents is requested.

Mr. Glick indicated that claims 96-102 copied from the later issued '999 patent were presumed to be allowed.

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Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that in view of the allowed claims 53, 78, 88-92, 94, 95 and 96-102 the application is in condition for declaration of interference with the '906 and '999 patents and notice to that effect is respectfully solicited. In the event the Examiner, the interference specialist or the APJ is of the opinion that a brief telephone or personal interview with applicant's undersigned representative will expedite the declaration of interference in this matter, he is respectfully requested to contact applicant's undersigned representative.

Respectfully submitted,

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.


Stanley C. Spooner
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2/14/03
Date